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advantage of the information in question, or if the information was available to him from another source.” [\*Id.\* at 601](#) (citations omitted). According to the Sixth Circuit, “*Brady* is concerned only with cases in which the government possesses information which the defendant does not.” [\*Id.\*](#) That court has also stated that “[w]here . . . ‘the factual basis for a claim is reasonably available to the petitioner or his counsel from another source, the government is under no [*Brady/Giglio*] duty to supply that information to the defense.’” [\*Matthews v. Ishee\*, 486 F.3d 883, 891 \(6th Cir.\), cert. denied, 128 S. Ct. 613 \(2007\)](#) (citations omitted).

Thus, information that would reveal whether the Defendants or their counsel had prior, independent knowledge of the credibility problems of Agent Lucas or of the other allegations made against Agent Lucas would be highly relevant to the resolution of the Defendants’ *Brady/Giglio* claims. As a result, the Court declines to quash the Government’s subpoenas on the basis that the information sought from the Defendants is not relevant.

Further, the Court declines to quash the Government’s subpoenas on the ground that the information requested is covered by attorney-client privilege or by work-product protection. The Supreme Court has held that the attorney-client privilege “protects only those disclosures – necessary to obtain informed legal advice – which might not have been made absent the privilege.” [\*Fisher v. United States\*, 425 U.S. 391, 403 \(1976\)](#). Attorney-client privilege “only protects disclosure of confidential communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney.” [\*Upjohn v. United States\*, 449 U.S. 383, 395 \(1981\)](#). The privilege is strictly construed “‘because [it] reduces the amount of information discoverable during the course of a lawsuit.’” [\*In re Columbia/HCA Healthcare Corp. Billing Practices Litig.\*, 293 F.3d 289, 294 \(6th Cir. 2002\)](#) (quoting *United States v. Collis*, 128 F.3d 313, 320 (6th Cir. 1997)); [\*Fausek v. White\*](#),

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965 F.2d 126, 132 (6th Cir. 1992). Attorney-client privilege also does not pertain to communications made by a client to his attorney with the understanding that it will be disclosed to third parties. Couch v. United States, 409 U.S. 322, 335-36 (1976).

Work-product protection, like attorney-client privilege, is also quite narrow, extending to documents recording a lawyer's "mental impressions, personal beliefs, trial strategy, [and] legal conclusions." Goldberg v. United States, 425 U.S. 94, 106 (1976) (citations omitted). Generally, work-product protection applies to documents prepared in anticipation of litigation or for trial. *See In re Powerhouse Licensing, LLC., 441 F.3d 467, 473 (6th Cir. 2006)*.

In this case, given the relevance and importance of the information sought by the Government through the subpoenas in question and the relatively narrow applicability of attorney-client privilege and work-product protection, the Court **DENIES** the Defendants' motion to quash. If Defense counsel wish to assert attorney-client privilege or work-product protection as a reason for non-production of particular information, they may do so. The mere fact that particular information is in the files of Defense counsel does not automatically make it privileged or protected, however. Defense counsel must specifically mark any documents to which they think attorney-client privilege or work-product protection applies and these documents must then be produced to the Court for the purposes of an *in camera* inspection.

IT IS SO ORDERED.

Dated: June 5, 2009

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE